

REMARKS

Claims 1, 7-9 and 22 are pending in the present Application. Claims 7-9 have been cancelled, Claims 1 and 22 have been amended, leaving Claims 1 and 22 for consideration upon entry of the present Amendment.

Support for the amendments to claim 1 can be found in claim 9 and in the Specification of Provisional Application Ser No. 60/482,234 in paragraphs [0004] and [0039].

Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Information Disclosure Statement

Applicants note that the Examiner has not considered ruled-out art submitted in previous Information Disclosure Statements. With regard to publication dates, the EPO office action cited on October 17, 2007 provided the date of the office action, and the International Search Report filed on December 22, 2005 provided the international filing date. These references are again cited on the IDS submitted herewith. Applicants respectfully request that the art referenced above be considered and a fully initialed PTO Form A820 be returned to the Applicants.

Claim Objections

Claims 7 and 8 stand objected to as allegedly failing to further limit the method of claim 1. Claims 7 and 8 have been cancelled thus rendering the claim objection moot.

For at least the foregoing reasons, reconsideration and withdrawal of the claim objections are requested.

Priority

Because the claims recited an “individual” rather than a “mammal” the Examiner has granted the claims the June 18, 2004 filing date of the PCT application rather than the June 24, 2003 filing date of the provisional application. The claims have been amended to mammal, thus the claims have the benefit of the June 23, 2003 filing date of the provisional application.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 9 and 22 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to point out and distinctly claim the subject matter the applicant regards as the invention.

Specifically, the Examiner alleges that the term adult (acute) respiratory distress syndrome is unclear. As evidenced by Udobi et al., Attachment A, before 1992 the acronym ARDS referred to adult respiratory distress syndrome. The American-European Consensus Committee on ARDS standardized the term to acute respiratory distress syndrome because it occurs in all ages. The terms are still used somewhat interchangeably in the literature. In order to simplify matters for prosecution, claims 1 and 22 have been amended to acute respiratory distress syndrome, the art-accepted definition for ARDS.

In addition, the Examiner has indicated that the patient population in claim 22 is unclear. Claim 22 has been amended to clarify that the patient is a mammal in need of treatment for acute respiratory distress syndrome.

For at least the foregoing reasons, reconsideration and withdrawal of this rejection are requested.

Claim Rejections Under 35 U.S.C. § 102(a)

Claims 1, 7-9 and 22 stand rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Sanchez et al. (Phosphorylation and action of the immunomodulator FTY720 inhibits vascular endothelial cell growth factor-induced vascular permeability).

In making the rejection, the Examiner stated “As discussed above, the current effective filing date for the instant claims is June 18, 2004.” (March 10, 2010 Office Action, p. 5)

The publication date of Sanchez et al. is September 3, 2003, after the filing date of Provisional Application Ser No. 60/482,234. The claims have been amended from “individual” to “mammal”, thus the claims have the benefit of the June 24, 2003 filing date of Provisional Application Ser No. 60/482,234 and Sanchez et al. is not available as a reference.

For at least the foregoing reasons, reconsideration and withdrawal of this rejection are requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1, 7-9 and 22 stand rejected under 35 U.S.C. § 103 (a) as allegedly obvious over US 2004/0058894 to Doherty et al.

Doherty et al. is directed to methods of treating immunoregulatory abnormalities in mammalian patients by administering a compound which is an agonist of the S1P₁/Edg1 receptor. (Abstract) FTY720 is listed as a second immunosuppressive agent to be combined with the disclosed agonists. (paragraph [0079]) Immunoregulatory abnormalities to be treated include sepsis, vasculitis and atherosclerosis. (paragraph [0075])

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

Doherty et al. is directed to the treatment of immunoregulatory abnormalities, while the present application is directed to treatment of vascular permeability disorders. There appears to be some overlap between the immunoregulatory disorders described in Doherty et al. and the vascular permeability disorders described in the present application. The present claims have been amended to include only those disorders that are not specifically disclosed in Doherty et al, specifically endothelial injury, thrombocytopenia, ischemic cardiovascular disease, ischemic peripheral vascular disease, a peripheral vascular disorder associated with diabetes, Dengue hemorrhagic fever, acute respiratory distress syndrome, vascular leak syndrome, or a combination comprising one or more of the foregoing disorders. As these disorders are not taught by Doherty et al., Doherty et al. does not render claims 9 and 22 obvious.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the objection(s) and rejection(s) and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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